



September 11, 1989

RECORDATION NO. 15879C FILED 10/15

SEP 13 1989 - 1 10 PM

**Itel Rail Corporation**

55 Francisco Street  
San Francisco, CA 94133  
(415) 984-4000  
(415) 781-1035 Fax

9-256A017

**INTERSTATE COMMERCE COMMISSION**

Hon. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

Re: Amendment No. 2 to Master Lease Agreement No. 2209 dated September 20, 1988, between Itel Rail Corporation, Itel Railcar Corporation and Newburgh and South Shore Railroad Company

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$13 recordation fee.

Please record this Amendment under Master Lease Agreement No. 2209 dated September 20, 1988, between Itel Rail Corporation, Itel Railcar Corporation and Newburgh and South Shore Railroad Company, which was filed with the ICC on October 17, 1988, under Recordation No. 15879.

The parties to the aforementioned instrument are listed below:

Itel Rail Corporation and  
Itel Railcar Corporation (Lessor)  
55 Francisco Street  
San Francisco, California 94133

Newburgh and South Shore Railroad Company (Lessee)  
4200 E. 71st Street  
Cleveland, Ohio 44105

This Amendment adds to the Lease Agreement twenty-five (25) 52'6", 100-ton, GB gondolas bearing reporting marks NSR 130346-130388 (n.s.).

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

*Patricia Schumacker*  
Patricia Schumacker  
Legal Department

MOTOR OPERATING UNIT

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INTERSTATE COMMERCE COMMISSION

SCHEDULE NO. 2

*RCS*  
*SDA*

(ITEL RAIL CORPORATION as successor in interest to both THIS SCHEDULE No. 2 ("Schedule") to that certain Lease Agreement, as amended, (the "Agreement") made as of September 20, 1988 between ITEL RAIL CORPORATION and ITEL RAILCAR CORPORATION, severally, as lessors, and NEWBURGH AND SOUTH SHORE RAILROAD COMPANY, as lessee ("Lessee") is made this 29th day of August, 1989, between ITEL RAILCAR CORPORATION ("Lessor") and Lessee.

Lessor and Lessee agree as follows:

1. All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Schedule No. 2, except that the term "Cars" as used herein shall only refer to the equipment described in this Schedule unless otherwise indicated.
2. Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

AAR Mech Desig.	Description	Numbers	Dimensions Inside		No. of Cars
			Length	Width	
GB	100-ton, steel floor solid end gondolas	NSR 130300- 130359 88 (n.s.)	52'6"	9'6"	25

*RCS*  
*SDA*

3. The term of the Agreement with respect to each Car described in this Schedule shall commence at 12 noon on the date such Car is remarked ("Delivery") pursuant to Subsection 3.A. and shall continue as to all of the Cars described in this Schedule for three (3) years from the earlier of (i) the date on which the last Car described in this Schedule was remarked or (ii) sixty (60) days from the date the first Car described in this Schedule was delivered to Lessee's lines (the "Term"). Upon the delivery of the final Car, Lessor shall provide Lessee with a Certificate of Delivery, in the form of Exhibit A attached hereto, including the Delivery date for each Car and the expiration date of the Agreement with respect to the Cars described in this Schedule. Unless Lessee, within fifteen (15) days of such notice, demonstrates to the satisfaction of Lessor that such date is incorrect, then Lessee shall be deemed to have concurred to such date.

4. When a Car has been remarked, it shall be moved to Lessee's railroad line at no initial cost to Lessee at the earliest time that is consistent with the mutual convenience and economy of the parties. Lessee agrees to pay the rent set forth in this Schedule to the Agreement notwithstanding the fact that Lessee may not have immediate physical possession of the Cars leased hereunder.
5.
  - A. Lessee shall perform the registration and record keeping required for the Cars described in this Schedule, as described in Section 4 of the Agreement. Lessee shall register each Car in UMLER placing the letters designated by Lessor in owner's field in such a manner that Lessor, or its agent, is allowed access to any required information including but not limited to Train 62 Junction Advices and the Train 65, 67, 71 and 80 Advices with regard to each Car.
  - B. Lessee shall submit to Lessor a monthly report in complete AAR format for all sums due to Lessee from Lessor for such calendar month with respect to the maintenance of the Cars, including sums due for maintenance performed by third parties and for maintenance performed by Lessee. Lessor shall pay to Lessee all sums due pursuant to this subsection within thirty (30) days after receipt of such monthly maintenance report and bill.
6. Lessor shall perform or cause to be performed and shall pay all costs and expenses associated with the maintenance of the Cars described in this Schedule, except as set forth in Section 5 of the Agreement (as modified by Exhibit B attached hereto); provided, however, that Subsection 5.A. of the Agreement shall not apply with respect to such Cars.
7. Lessor agrees to reimburse Lessee, within thirty (30) days of Lessor's receipt of the receipted copy of the paid tax bill, for all taxes actually paid in cash by Lessee resulting from: 1) ad valorem tax assessments on the Cars; and 2) any assessment, levy or impost relating to any Car, the Agreement, or the delivery of the Cars, which remained unpaid as of the date of the delivery of the Cars to Lessee or which is assessed, levied or imposed during the term of the Agreement, except taxes on income or gross receipts imposed on Lessee or sales or use tax imposed on mileage charges, car hire revenue, or the proceeds of the sale or lease of the Cars. Lessor and Lessee will comply with all state and local laws requiring filing of ad valorem returns associated with the Cars. Notwithstanding any portion of this Section, Lessor shall not be responsible for penalty or interest assessments resulting from Lessee's failure to comply with any regulation or statute of any taxing or assessing authority. Lessee shall forward to Lessor upon receipt all correspondence, notifications of proposed tax assessments and tax bills associated with any tax reimbursable by Lessor. Lessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment or tax bill. Lessor shall assume full responsibility for all expenses, including legal fees, resulting from such contest.

8. Rent

A. Definitions

- (i) "Eligible Lines" is defined as the railroad lines owned and operated by Lessee as of the date this Schedule is executed by the parties. Unless Lessor and Lessee agree otherwise, any lines purchased by Lessee or added to the Eligible Lines or any Eligible Lines sold by Lessee to another party during the Term, effective on the date of such sale, are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined in Subsections 8.A.(ii), (iii) and (iv) hereinbelow).
- (ii) "Per Diem Revenues" is defined as the total per diem revenues earned and due from other railroad companies for the use or handling of the Cars, including but not limited to, per diem as provided for gondolas under Appendix R to the Hourly and Mileage Car Hire Rate Table, set forth in The Official Railway Equipment Register dated April 1989, whether or not collected and received by Lessor, and undiminished by any claimed abatement, reduction or offset caused by any action of Lessee.
- (iii) "Mileage Revenues" is defined as the total mileage revenues earned and due from other railroad companies for the use or handling of the Cars, including but not limited to, mileage as prescribed for gondolas under Appendix R to the Hourly and Mileage Car Hire Rate Table, set forth in The Official Railway Equipment Register dated April 1989, whether or not collected and received by Lessor, and undiminished by any claimed abatement, reduction or offset caused by any action of Lessee.
- (iv) "Revenues" is defined as the sum of the Per Diem Revenues and Mileage Revenues.
- (v) The "Utilization Rate" of the Cars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that Revenues were earned on the Cars commencing upon the Initial Loading (as defined hereinbelow), and the denominator of which is the aggregate number of days in each calendar year that the Cars were on lease to Lessee, commencing upon the Initial Loading.
- (vi) The "Base Rent" per calendar quarter is defined as the cash equivalent of the Per Diem Revenues which the Cars would

have earned in the aggregate if the Cars had been on railroad lines other than Eligible Lines for eighty percent (80%) of the hours that such Cars were subject to the Agreement during such calendar quarter. The Base Rent for any Car which is not subject to the Agreement for an entire calendar quarter shall be prorated daily for such Car during such calendar quarter.

(vii) "Initial Loading" of a Car shall be the earlier to occur of either: 1) the date such Car shall have been loaded off Lessee's railroad line with the first load of freight; or 2) the thirty-first (31st) day after such Car is first received on Lessee's lines.

B. Lessor shall receive all Revenues earned by each Car prior to its Initial Loading. Each Car delivered pursuant to Subsection 3.A. of the Agreement shall become subject to the rental calculation under Subsection 8.C. hereinbelow upon the Initial Loading of such Car; provided, however, that Lessor shall retain and be entitled to all Revenues earned by such Car after such Initial Loading, including any Revenues due Lessee pursuant to Subsection 8.C.(ii) ("Lessee's Revenue Share"), until the total amount of Lessee's Revenue Share retained by Lessor shall have become equal to Lessor's expenses for remarking and delivering such Car to Lessee ("Delivery Expense").

C. Lessee agrees to pay rent to Lessor for the Cars calculated as follows:

(i) In the event Per Diem Revenues earned in any calendar quarter or applicable portion thereof are equal to or less than the Base Rent, Lessor shall retain a sum equal to one hundred percent (100%) of the total Per Diem Revenues.

(ii) In the event Per Diem Revenues earned in any calendar quarter or applicable portion thereof exceed the Base Rent, Lessor shall retain an amount equal to the Base Rent and Lessee, subject to Subsection 8.B., shall retain one hundred percent (100%) of all Per Diem Revenues in excess of the Base Rent.

(iii) Lessor shall receive an amount equal to one hundred percent (100%) of the Mileage Revenues earned and due from other railroad companies with respect to the Cars.

D. (i) In the event that as a result of any action or inaction by Lessee, Lessor shall receive or earn for the use of any Cars, Revenues calculated at hourly or mileage car hire rates that are lower in amount than those specified in Subsection 8.A. (ii) and 8.A. (iii), Lessee shall pay to

Lessor, within ten (10) days of Lessor's request, an amount equal to the difference between the Revenues such Cars would have earned at the Per Diem Revenue and Mileage Revenue rates and the amount of revenues actually received or earned for such Cars.

(ii) Upon any abatement, reduction or offset as described in Subsections 8.A. (ii) and 8.A (iii), Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor the amount of such abatement, reduction or offset.

(iii) If, at any time during the Agreement, Lessee operates lines other than the Eligible Lines, Lessee shall supply Lessor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on any other lines operated by Lessee.

E. Any agreement between Lessee and any other party with respect to the Cars ("Third Party Agreement(s)") shall be null and void without Lessor's prior written approval if such Third Party Agreement affects the revenues earned by the Cars.

F. The calculations required in Section 8 shall be made within five (5) months of the end of each calendar year ("Final Calculations"). Lessee shall pay to Lessor by the sixtieth (60th) day after the end of each Service Month (as hereinafter defined), eighty percent (80%) of the total revenues for that Service Month. For the purposes hereof, "Service Month" shall be defined as the calendar month in which revenues were actually earned. At the time payment of eighty percent (80%) of the total revenues is made to Lessor, Lessee shall report to Lessor for the same month the hours earned, miles traveled and dollar figure for one hundred percent (100%) of the revenues. Ten percent (10%) of the revenues shall be remitted to Lessor within ninety (90) days after the end of each Service Month and the remaining ten percent (10%) of the total revenues shall be remitted to Lessor within one hundred twenty (120) days after the end of each Service Month. Lessor shall within three (3) months of the end of each calendar quarter, calculate on a quarterly year-to-date basis, the approximate amount, if any, due either party pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculations, provided, however, that within twenty (20) days following the Final Calculations, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.

G. If, with respect to any Quarter, Revenues received by Lessor are less than \$1,000,000, Lessor may, at any time, at its option and upon not less than thirty

(30) days prior written notice to Lessee terminate this Agreement as to the Cars as Lessor shall determine.

- H. If any Car has remained on Lessee's property because Lessee has not given preference to the Car as specified in Subsection 3.B. of the Agreement, Lessee shall be liable for and remit to Lessor an amount equal to the revenues which would have been generated if such Car had been in the physical possession and use of a railroad for the entire period during which such Car is on Lessee's property due to such failure, with each Car travelling fifty (50) miles per day.
- 9. If the Utilization Rate of the Cars described in this Schedule is less than seventy percent (70%) in the aggregate during the entire Term of the Agreement, then upon the expiration of the Agreement with respect to the Cars described in this Schedule, Lessee shall be responsible for all costs associated with the remark and transportation of each Car as provided in Subsections 11.A.(ii), 11.A.(iii) and Section 11.C. of the Agreement; provided, however, that in the event a contractor chosen by Lessor remarks each Car, then Lessee shall be responsible for a cost of no greater than one hundred dollars (\$100.00) per Car for such remark.
- 10. If the Utilization Rate of the Cars described in this Schedule is seventy percent (70%) or more in the aggregate during the entire Term of the Agreement, then upon the expiration of the Agreement with respect to the Cars described in this Schedule, Lessor shall be responsible for any costs associated with the remark and transportation of each Car.
- 11. A. Upon the expiration of the Agreement with respect to any Car listed on this Schedule, if pursuant to the storage provisions as set forth in Section 11.A.(i) of the Agreement such Car remains in storage beyond the free storage period, Lessor shall pay to Lessee, within thirty (30) days after receiving an invoice from Lessee, a daily storage rate of ninety cents (\$.90) per Car for each day the Car(s) remains in storage after the free storage period.
- B. Upon the early termination of the Agreement with respect to any Car listed on this Schedule, if pursuant to the storage provisions as set forth in Section 11.B.(i) of the Agreement such Car remains in storage beyond the free storage period, Lessor shall pay to Lessee, within thirty (30) days after receiving an invoice from Lessee, a daily storage rate of one dollar and twenty cents (\$1.20) per Car for each day the Car(s) remains in storage after the free storage period.
- 12. Except as expressly modified by this or any other Schedule, all terms and provisions of the Agreement shall remain in full force and effect with respect to all Cars subject to the Agreement.

13. This Schedule may be executed by the parties hereto in any number of counterparts, and all counterparts taken together shall be deemed to constitute one instrument.

*APL* ITEL RAILCAR CORPORATION

NEWBURGH AND SOUTH SHORE RAILROAD  
COMPANY

By: *[Signature]*

By: *[Signature]*

Title: *President and Chief Executive Officer*

Title: PRESIDENT

Date: 8/28/89

Date: 8/15/89

EXHIBIT A

CERTIFICATE OF DELIVERY DATE

Exhibit A to Schedule No. 2 dated as of \_\_\_\_\_ to Lease Agreement, by and between ITEL RAILCAR CORPORATION ("Lessor") and NEWBURGH AND SOUTH SHORE RAILROAD COMPANY ("Lessee") to Lease Agreement dated as of September 20, 1988 by and between Lessor, Itel Rail Corporation, severally as lessors and Lessee.

CAR REPORTING  
MARKS AND NUMBER

DELIVERY DATE

The last day of the Term for the above referenced Cars shall be \_\_\_\_\_

ITEL RAILCAR CORPORATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT B

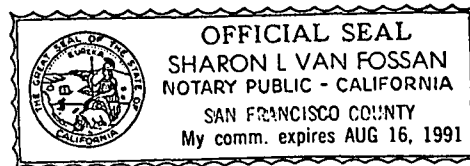
Running Repairs: Gondolas

Angle Cocks	Wheels
Air Hose	Yoke
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plate Repair (Not Replacement of Center Plate)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	
Hand Brakes	
Brake Beams and Levers	
Truck Springs	

STATE OF CALIFORNIA    )  
                                  ) ss:  
COUNTY OF SAN FRANCISCO )

On this 28th day of August, 1989, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of ITEL Railcar Corporation, that the foregoing Schedule No. 2 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan  
Notary Public



STATE OF ILLINOIS )  
                                  ) ss:  
COUNTY OF COOK )

On this 15th day of AUGUST, 1989, before me personally appeared R.E. SMITH, to me personally known, who being by me duly sworn says that such person is PRESIDENT of Newburgh and South Shore Railroad Company that the foregoing Schedule No. 2 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

L.J. Looby  
Notary Public

